

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

GOVERNOR'S OFFICE
GOVERNMENT CONTROL CENTER

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CASE NO. PUR-2020-00172

**Ex Parte: In the matter of adopting new rules of the
State Corporation Commission governing exemptions for
large general service customers under § 56-585.1 A c of the Code of Virginia**

STAFF REPORT

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INTRODUCTION

During the 2020 Session, the Virginia General Assembly enacted Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly. These duplicate Acts of Assembly, known as the Virginia Clean Economy Act ("VCEA"), became effective on July 1, 2020. The VCEA, *inter alia*, amended § 56-585.1 A 5 c of the Code of Virginia ("Code") to require the State Corporation Commission ("Commission") to establish rules by which large general service ("LGS") customers may be exempted from participation in energy efficiency programs. The Code directs that the new rules are to be effective by June 30, 2021.

On September 30, 2020, the Commission issued its Order for Notice and Comment ("Order") which established this proceeding to promulgate rules governing LGS customer exemptions from utility Rate Adjustment Clause charges for energy efficiency. The Order included the proposed rules ("Proposed Rules") which were noticed to the public and published in the Virginia Register of Regulations. The Order also provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules by November 17, 2020.

On November 17, 2020, the Virginia Committed For Fair Utility Rates & Old Dominion Committee for Fair Utility Rates ("the Committees"), Dominion Energy Virginia ("DEV"), Appalachian Power Company ("APCo"), the Virginia Department of Mines, Minerals, and Energy ("DMME"), and the Natural Resources Defense Council ("NRDC"), filed comments on the Proposed Rules (together as "the Commenters"). Case comments were also received from the Virginia Poverty Law Center ("VPLC"), Virginia Energy Efficiency Council ("VAEEC"), as well as three LGS customers. The Committees, DEV, APCo, and the NRDC proposed specific changes

to the language of the Proposed Rules. The other commenters provided more general recommendations related to the Proposed Rules.

SUMMARY OF COMMENTS

DEV

DEV first provided comments regarding Section 20 VAC 5-250-10, Applicability and scope. DEV recommends that the rules be modified to require that a customer must have a verifiable history of using at least one megawatt of demand at least three months within a consecutive twelve-month period.¹ DEV states that requiring a minimum of three occurrences would eliminate anomalies caused by extreme weather or other external conditions. DEV also recommends that the twelve-month period in which the demand exceeds one megawatt be required to be within the most recent three years of the customer's electric service.² Finally, DEV recommends that the word "contiguous" be added to the description of a "single site" to avoid ambiguity about certain geographical locations.³

Within Section 20 VAC 5-350-20, Administrative procedures for notice to utility and Commission, DEV recommends that a deadline be established for utilities to provide responses to the notices of nonparticipation that were submitted by June 1, rather than having to process the notices on a rolling basis.⁴ DEV states that having a more structured process with firm dates will better enable utilities to manage workflow and monitor compliance deadlines. Similarly, DEV

¹ DEV Comments at 3.

² *Id.*

³ *Id.*

⁴ *Id.*

recommends that the billing changes for nonparticipating LGS customers become effective on July 1 of the applicable calendar year rather than on a rolling basis.⁵

DEV further proposes that notices of nonparticipation received after the March 1 deadline not be processed for that year.⁶ DEV suggests the customers that provided notices after March 1 should be required to submit a new notice of nonparticipation for the following year.⁷ Lastly, DEV recommends that this section include a notification of material changes by nonparticipating customers be provided within sixty days of the material change.⁸

With respect to Section 20 VAC 5-350-30, Standard criteria for notice to the utility, DEV recommends that the LGS customers include the applicable utility account numbers within the notice.⁹ DEV states this was relevant for those customers that may seek to aggregate multiple accounts within a single site to reach the one megawatt demand threshold. As it relates to annual reporting requirements, DEV recommends that each LGS customer provide an annual report that describes the energy efficiency savings achieved by the customer during each twelve-month period in which such notice of nonparticipation is in effect to both the utility and Commission Staff.¹⁰ DEV proposes that the report also include the status of the measures and operational changes included in the notice of non-participation.¹¹ DEV's remaining suggested edits were minor.

APCo

⁵ *Id.*

⁶ DEV Comments at 3-4.

⁷ DEV Comments at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

In Section 20 VAC 5-350-10, Applicability and scope, APCO recommends that LGS customers have a verifiable history of one megawatt of demand in any single billing month, during the three previous calendar years.¹² In Section 20 VAC 5-350-20, Administrative procedures for notice to utility and Commission, APCo recommends that customers should not be qualified for exemption if they had participated in or received a rebate through a Commission-approved utility energy efficiency program in the last sixty months.¹³

APCo also recommends changes to Section 20 VAC 5-350-30, Standard criteria for notice to the utility. APCo recommends that the notice of nonparticipation describe the energy efficiency savings achieved in kilowatt-hours during each of the prior five years, as well as the life expectancy of each measure.¹⁴ APCo also recommends a new requirement that the energy savings achieved by the customer meet or exceed the required percentage energy reduction as required by the VCEA for their respective utility, and that the customer include analysis in its notice of nonparticipation regarding such savings.¹⁵ APCo recommends that the utility have no responsibility for verifying such compliance but would verify information has been provided by the customer in its notice of nonparticipation.¹⁶ In paragraph E of this Section, APCo recommends language stating that it be the customer's sole responsibility to ensure the energy savings claimed in the customer's notice of nonparticipation meets the definition of measured and verified as defined in § 56-576 of the Code, and that compliance be attested to in the customer's affidavit.¹⁷ APCo proposes similar language

¹² APCo Comment at 1.

¹³ *Id.*

¹⁴ APCo Comments at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

in paragraph F of this Section.¹⁸ Lastly, APCo recommends removing paragraph G of this Section from the rules.¹⁹

In Section 20 VAC 5-350-40, Dispute resolution, APCo recommends incorporating language which states "For the utility, all costs incurred shall be recoverable through rates."²⁰

NRDC

NRDC argues that in Section 20 VAC 5-350-10 of the Proposed Rules, Staff misstates the language found in § 56-585.1 A 5 c, because the restatement of the Code language is incomplete. NRDC states that § 56-585.1 A 5 c only permits exemption if an applicant has energy efficiency "programs" in place, that provide measured and verified savings which are both "consistent with industry standards" and "other regulatory criteria stated in § 56-585.1."²¹ NRDC also argues that the Code "plainly requires that any applied-for exemption is dependent upon the Commission first making a 'finding' of each of the above requirements."²² To that end, NRDC proposes changes to Section 20 VAC 5-350-10 that require the customer to demonstrate that it has implemented energy efficiency programs that the Commission finds are consistent with industry standards for similar such customers and which meet other regulatory criteria in § 56-585.1.²³

Similarly, NRDC argues that Section 20 VAC 5-350-30 also fails to include the above referenced statutory requirements. NRDC recommends language in paragraph E of this Section that indicates nonparticipation would not be approved by the Commission unless the Commission

¹⁸ APCo Comments at 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ NRDC Comments at 1.

²² *Id.*

²³ NRDC Comments at 2.

first finds that each annual report demonstrates energy efficiency savings of a level consistent with commonly accepted industry standards.²⁴

DMME

DMME did not provide any specific changes to the language of the Proposed Rules. DMME recommends that specific energy savings targets be established that compel the participants to implement programs that achieve substantial savings, in line with the energy efficiency standards applied to the investor-owned utilities in the VCEA.²⁵ DMME also encourages the Commission to include more detailed information on qualifying Evaluation, Measurement, and Verification ("EM&V") measures.²⁶ Specifically, DMME recommends that the Commission prescribe industry standard methodologies such as the International Performance Measurement and Verification Protocol and its associated options for different types of energy efficiency measures in order to establish a strong performance standard for this program.²⁷ DMME also recommends that the Commission consider using a standardized EM&V tool for administering this program, as the standardization and digitization of data may provide benefits for both users and Commission Staff.²⁸

DMME also suggests adjusting the baselines to the 2016-2019 timeframe given the impacts of COVID-19 affecting energy demand, as well as establishing an energy savings account which could be administered by the Commission or the utility and would enable a participating LGS customer to earmark funds for energy efficiency measures.²⁹

²⁴ *Id.*

²⁵ DMME Comments at 1.

²⁶ DMME Comments at 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

The Committees

The Committees' only recommendation is to insert a new paragraph E in Section 20 VAC 5-350-20. The proposed language specifically states that customers that were exempted from any rate adjustment clause approved for a utility by the Commission pursuant to § 56-585.1 A 5 c at the time this chapter comes into effect are presumed to still be exempt.³⁰ It also states that customers who were seeking to continue an exemption must provide a new notice of nonparticipation concerning the rate adjustment clause to its utility on or before March 1 of the year after this chapter is approved.³¹ The Committees argue that the Commission should adopt the proposed changes to provide clarity to customers as to when they must provide their notice of nonparticipation in order to continue exemptions uninterrupted from rate adjustment clauses for energy efficiency programs.³²

VAEEC

VAEEC did not provide any specific changes to the language of the Proposed Rules. VAEEC recommends that an LGS customer be defined as a facility whose peak measured demand has reached or exceeded one megawatt during at least three billing months within any prior twelve-month period during the last three years prior to the exemption.³³ VAEEC recommends that the Commission not only set an energy savings threshold that must be met in order for an LGS customer to receive an exemption, but to also set it at such a level that these internal programs are producing effective energy savings for the customer.³⁴ VAEEC also recommends aligning LGS customer internal program EM&V protocols and reporting requirements with the Federal Energy

³⁰ Committees' Comments at 1.

³¹ *Id.*

³² Committees' Comments at 4.

³³ VAEEC Comments at 2.

³⁴ VAEEC Comments at 3.

Management Program Protocols as used by DMME for public Energy Savings Performance Contracting ("ESPC").³⁵ VAEEC recommends aligning LGS customer self-direct enforcement guidelines with the protocols set forth by DMME for public ESPC contracts with an additional option of revoking an exemption if needed.³⁶ Finally, VAEEC recommends developing a process to address end-of-life measure savings in relation to the customer exemption, which should include a timeline or submitting EM&V plans for new measures.³⁷

VPLC

VPLC did not provide any specific changes to the language of the Proposed Rules. VPLC comments that it supports the comments of VAEEC and emphasized the importance of incorporating energy savings targets for the LGS customers.³⁸

DISCUSSION

³⁵ VAEEC Comments at 4.

³⁶ VAEEC Comments at 5.

³⁷ *Id.*

³⁸ VPLC Comments at 2.

The Commenters made various recommended changes to the Proposed Rules, some of which Staff accepted, and which have been incorporated into the revised rules ("Revised Rules") included in Attachment A of this report. There were other recommended changes made by the Commenters which Staff disagreed with or proposed alternative language. These changes will be discussed in more detail below.

20VAC5-350-10. Applicability and scope.

DEV recommends the word "contiguous" be inserted in the second sentence after the words "demand from a single" and before the word "site." Staff opposes this change as it is not consistent with the language of the Code which only states "demand from a single site."³⁹

APCO recommends the language "in any single billing month, during the previous three calendar years" at the end of the second sentence in the paragraph, while DEV recommends the language "at least three times within a consecutive 12-month period" in the same place. The proposed language from the utilities adds further limitations on how often a LGS customer has to meet the one megawatt of demand threshold to qualify for the exemption. While Staff agrees that verification is important, Staff recommends the language "in any single billing month, during each of the previous three calendar years" as an alternative to the utilities' proposals. Such alternative language provides for verification beyond anomalies without being overly burdensome on those LGS customers that meet the one megawatt threshold.

After the second sentence, DEV recommends the insertion of a new sentence which would read "The 12-month period for which demand exceeds one megawatt shall be within the most recent three years of the customer's electric service." Staff's proposal above makes this language

³⁹ § 56-585.1 A 5 c.

unnecessary, and Staff recommends it not be included in the final rules. However, if the Commission accepts DEV's proposed language in the previous sentence, Staff does not oppose this proposed new sentence.

In the third sentence, DEV again recommends the word "contiguous" be inserted after the words "located on a single" and before the word "site." Staff opposes this change as it is not consistent with the language of the Code.

The NRDC recommends inserting the language "that the commission finds are consistent with industry standards for similar such customers and meet other regulatory criteria in § 56-585.1 that the commission reasonably deems appropriate" to the end of the last sentence. This language could potentially require a Commission proceeding for each individual customer who files for an exemption, which would be overly burdensome on Staff and Commission resources. Staff recommends the last sentence be modified to say: "A customer is eligible for an exemption from any rate adjustment clause approved by the State Corporation Commission (commission) pursuant to § 56-585.1 A 5 c of the Code of Virginia, if any customer can certify to the commission that is has implemented energy efficiency programs (programs), at the customer's expense, that have produced measured and verified results within the prior five years, such certification shall be consistent with industry standards for similar such customers and meet other regulatory criteria in 56-585.1 that the commission reasonably deems appropriate."

20VAC5-350-20. Administrative procedures for notice to utility and Commission.

In paragraph B., DEV recommends that the language "within 60 days thereof" be replaced with "on or before June 1." To help clarify when the exemption will begin after it has been accepted by the utility, Staff recommends inserting the sentence "The exemption will commence

with the effective date of the utility's next rate adjustment clause" after the first sentence in this paragraph.

In paragraph B., in the existing second sentence, APCO recommends inserting the language ", and has not participated in, or received a rebate through, a commission-approved utility energy efficiency program in the last sixty months" at the end of the sentence. This additional limitation on receiving an exemption is not found in the language of the Code. Staff believes that this language is unnecessary and recommends it not be incorporated into the final rules.

In paragraph C., in the first sentence, DEV recommends replacing the language "with the billing month" with "July 1." Staff recommends modifying this proposed change to "with the effective date of the utility's next rate adjustment clause on or after July 1" to be consistent with Staff's proposed clarification to paragraph B.

The Committees recommend a new paragraph E that would state: "E. Customers that were exempt from any rate adjustment clause approved for a utility by the commission pursuant to § 56-585.1 A 5 c at the time this chapter comes into effect are presumed to still be exempt. However, customers seeking to continue an existing exemption must provide a new notice of nonparticipation, as defined in 20 VAC 5-350-30, concerning the rate adjustment clause to its utility on or before March 1 of the year after this chapter is approved." However, the statute that previously granted exemption was repealed, and those exemptions no longer exist. Thus, a new exemption would be required under revised §56-585.1 A c. Therefore, Staff recommends the following modification to the Committees' proposed language: "E. Customers seeking to continue a previous exemption must provide a new notice of nonparticipation, as defined in 20 VAC 5-350-30, concerning the rate adjustment clause to its utility on or before March 1 of the year after this chapter is approved."

20VAC5-350-30. Standard criteria for notice to utility.

APCO proposes that paragraph C. be modified to read:

"C. The notice of nonparticipation shall describe the energy efficiency savings achieved, in kWhs, during each year of the prior five years from its investment in its program as well as the specific measures undertaken to achieve those savings, and the life expectancy of each measure. The energy savings achieved by the customer should meet or exceed the required percentage energy reduction as required by the Virginia Clean Economy Act (VCEA) for a Phase I or Phase II utility, as appropriate. To calculate the percentage of savings for a customer's compliance with the VCEA, the baseline usage shall be the customer's 2019 metered kWh usage. The customer shall include such analyses in its notice of nonparticipation. The utility will have no responsibility for verifying such compliance, but will verify information has been provided by the customer in its notice of nonparticipation."

Staff recommends the following modification to this proposed language: "C. The notice of nonparticipation shall certify the energy efficiency savings achieved from investment in such programs, in kWhs, within the prior five years; as well as the specific measures undertaken to achieve those savings and the life expectancy of each measure. The notice of nonparticipation shall certify that the energy savings achieved by the customer meets or exceeds the requirements of § 56-596.2." Several of the Commenters suggest specific energy savings targets be included within the final rules.⁴⁰

APCO recommends moving part of the sentence from paragraph D., to paragraph C., which Staff does not oppose ("the life expectancy of the energy efficiency measures"). Without this

⁴⁰ The reference to § 56-596.2, which discusses specific energy savings targets for the utilities, is intended to incorporate these savings targets without including specific numerical values in the rules which may change over time if the Code section is amended by the General Assembly in the future.

section of the sentence, Staff believes paragraph D is no longer necessary and recommends removing it entirely from the rules.⁴¹

After the first sentence in paragraph D. (existing paragraph E.), APCO recommends inserting the following language: "It shall be the customer's sole responsibility to ensure the energy savings claimed in the customer's notice of nonparticipation meets the definition of measured and verified as defined in §56-576 of the Code of Virginia, and such compliance shall be attested to in the customer's affidavit. The utility will have no responsibility to verify the customer's energy savings as claimed in the notice of nonparticipation." Staff recommends that only the first proposed sentence be included in the final rules, as the first sentence already states it is the "customer's sole responsibility," making the second sentence unnecessary.

In revised paragraph D. (what is now, existing paragraph E.), prior to the final sentence, NRDC recommends inserting the following language:

Nonparticipation of any customer shall not be approved by the commission, unless the commission first finds that each such annual report demonstrates energy efficiency savings of a level consistent with commonly accepted industry standards for energy efficiency savings by similar customers, and adheres to any other regulatory criteria the commission reasonably deems appropriate. Such industry standards for energy savings may be based on ISP⁴² 50001 or other similar energy management systems standard.

The language as proposed appears to potentially create a requirement for a Commission proceeding to approve each customer exemption and then each subsequent annual report provided

⁴¹ With the deletion of paragraph D, the existing paragraphs, E., F. and G. would all change to D., E., and F., respectively.

⁴² Staff notes that the ISP is a typo and should be ISO.

by each participating customer.⁴³ Staff recommends this proposed language be modified to read: "Each customer shall certify that each such annual report demonstrates energy efficiency savings of a level consistent with commonly accepted industry standards for energy efficiency savings by similar customers, and adheres to any other regulatory criteria the commission reasonably deems appropriate. Such industry standards for energy savings may be based on ISO 50001, or the International Performance Measurement and Verification Protocol, or other similar energy management systems standard." The inclusion of the International Performance Measurement and Verification Protocol addresses comments made by DMME.

APCO recommends that revised paragraph E. (what is now, existing paragraph F.) include the following language at the end: "It shall be the customer's sole responsibility to ensure its measurement and verification plan conforms to this definition. The utility shall have no responsibility to verify the customer's measurement and verification plan conforms to the definition of "measured and verified" as provided in §56-576 of the Code of Virginia." Staff recommends that the second sentence in this proposed language not be included in the final rules as the first sentence already states it is the "customer's sole responsibility."

20VAC5-350-40. Dispute resolution.

In the second paragraph of paragraph C., APCO recommends inserting a sentence at the end that states: "For the utility, all costs incurred shall be recoverable through rates." Staff recommends that this proposed language not be included in the final rules as utility cost recovery

⁴³ On advice of counsel, 56-585.1 A c, requires the affected utility to act on nonparticipation certifications, with the Commission having authority to resolve disputes thereon, including but not limited to the Commission's authority to, on its own motion, initiate steps necessary to verify such nonparticipant's achievement of energy efficiency if the Commission has a body of evidence that the nonparticipant has knowingly misrepresented its energy efficiency achievement.

of dispute resolution costs is outside the scope of the purpose of these rules, which is to establish a procedure for LGS customers to seek exemption from energy efficiency rate adjustment clauses.

CONCLUSION

Staff appreciates all the comments received from the Commenters and believes the Revised Rules included in Attachment A provide a reasonable compromise of all the issues raised. Staff recommends that the Revised Rules be approved by the Commission.

ATTACHMENT A

STATE CORPORATION COMMISSION

Rules Governing Exemption for Large General Services Customers

Under § 56-585.1 A 5 c of the Code of Virginia

CHAPTER 350RULES GOVERNING EXEMPTIONS FOR LARGE GENERAL SERVICES CUSTOMERSUNDER § 56-585.1 A 5 c OF THE CODE OF VIRGINIA**20VAC5-350-10. Applicability and scope.**

This chapter is promulgated pursuant to the provisions of § 56-585.1 A 5 c of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia. This chapter is specifically applicable to the large general service customers of Virginia's electric utilities subject to the provisions of § 56-585.1 A 5 c, that have verifiable histories of using more than one megawatt of monthly demand from a single site, in any single billing month, during each of the previous three calendar years. As used in this chapter, a customer comprises all of the individual electric utility accounts owned by a single entity, located on a single site, and that are engaged in the same business. This chapter is also applicable to customers with highest measured demands from a single site of more than one megawatt in any single billing month if such customers do not have three calendar years of history. A customer is eligible for an exemption from any rate adjustment clause approved for a utility by the State Corporation Commission (commission) pursuant to § 56-585.1 A 5 c of the Code of Virginia, if any customer can demonstrate to the commission that it has implemented an energy efficiency programs (programs), at the customer's expense, that has have produced measured and verified results within the prior five years, such certification shall be consistent with industry standards for similar

such customers and meet other regulatory criteria in § 56-585.1 that the commission reasonably deems appropriate.

20VAC5-350-20. Administrative procedures for notice to utility and Commission.

A. Any customer seeking to establish its exemption from a rate adjustment clause authorized by the commission pursuant to § 56-585.1 A 5 c shall provide a notice of nonparticipation concerning the rate adjustment clause to its utility on or before March 1 of the year in which an exemption is sought. The notice of nonparticipation shall be concurrently filed by the customer with the commission's Division of Public Utility Regulation. Notices provided after March 1 will not be accepted during that calendar year and must be resubmitted for the next period being sought.

B. Upon receipt of the notice of nonparticipation, a utility shall, ~~within 60 days thereon or~~ before June 1, verify the customer's highest measured demand in the three prior calendar years preceding the receipt of such notice. The exemption will commence with the effective date of the utility's next rate adjustment clause. The utility shall accept the exemption request if the customer ~~has a highest measured usage in excess of one megawatt~~ meets the criteria for a large general service customer set forth in the previous section (20 VAC 5-350-10) and has submitted the information required by 20VAC5-350-30. In the event the utility fails to notify the customer of any deficiency in its notice of nonparticipation ~~within the 60-day period~~ by June 1, the exemption shall be deemed accepted by the utility. The utility's acceptance or denial of any exemption request shall concurrently be sent to the customer and ~~filed~~ provided by the utility ~~with~~ to the commission's Division of Public Utility Regulation.

C. Once a utility has accepted a customer's exemption request, that customer shall be exempt from any rate adjustment clause approved for the utility by the commission pursuant to § 56-585.1 A 5 c of the Code of Virginia, beginning ~~with the billing month~~ with the effective date of the utility's next rate adjustment clause on or after July 1 following the date of acceptance of the exemption request and continuing throughout the life of the customer's energy efficiency improvements

described in the customer's notice of nonparticipation. A customer shall notify the utility and the commission if the conditions of the customer's notice of nonparticipation change in any material respect within 60 days of the change.

D. Each notice of nonparticipation which contains confidential information shall be treated in accordance with commission's Rules of Practice and Procedure (5VAC5-20-170).

E. Customers seeking to continue a previous exemption must provide a new notice of nonparticipation, as defined in 20 VAC 5-350-30, concerning the rate adjustment clause to its utility on or before March 1 of the year after this chapter is approved.

20VAC5-350-30. Standard criteria for notice to utility.

A. Each notice of nonparticipation shall identify the customer, the customer's billing address and all applicable utility account number(s), and the location of the specific facility and metering pointsingle site for which any such exemption is being sought.

B. The notice of nonparticipation shall also contain an affidavit signed by the customer's President, corporate secretary, or other officer of the customer concerning the program or programs. Such affidavit shall attest to the validity of information submitted in support of the customer's notice of nonparticipation.

C. The notice of nonparticipation shall describe-certify the energy efficiency savings achieved from investment in such programs, in kWhs, in-within the prior five years from its investment in its program; as well as and the specific measures undertaken to achieve those savings; and the life expectancy of each measure. The notice of nonparticipation shall certify the energy efficiency savings achieved by the customer meets or exceeds the requirements of § 56-596.2.

D. The notice of nonparticipation shall include information concerning any anticipated change in operations that may affect achieved or expected energy efficiency savings, including the life expectancy of the energy efficiency measures undertaken.

DE. To qualify for the exemption, each customer shall have measurable and verifiable energy efficiency savings in the prior five years consistent with § 56-585.1 A 5 c of the Code of Virginia. It shall be the customer's sole responsibility to ensure the energy savings claimed in the customer's notice of nonparticipation meets the definition of measured and verified as set forth in §56-576 of the Code of Virginia, and such compliance shall be attested to in the customer's affidavit. Additionally, each customer providing a notice of nonparticipation to its utility pursuant to this chapter, shall subsequently furnish yearly reports to the utility and the commission's Division of Public Utility Regulation describing the energy efficiency savings achieved by the customer during each 12-month period in which such notice of nonparticipation is intended to be in effect. The annual reports shall include the status of energy efficiency measures and operational changes included in the customer's notice of nonparticipation. Each customer shall certify that each such annual report demonstrates energy efficiency savings of a level consistent with commonly accepted industry standards for energy efficiency savings by similar customers, and adheres to any other regulatory criteria the commission reasonably deems appropriate. Such industry standards for energy savings may be based on ISO 50001, or the International Performance Measurement and Verification Protocol, or other similar energy management systems standards. Such reports shall be filed on or about March 1 of the year following such customer's filing of its notice of nonparticipation, with such March 1 filings continuing thereafter throughout the life of the customer's energy efficiency improvements described in the customer's notice of nonparticipation.

EE. Each notice of nonparticipation shall also include a measurement and verification plan conforming to the protocol set forth in the definition of "measured and verified" as provided in § 56-576 of the Code of Virginia. It shall be the customer's sole responsibility to ensure its measurement and verification plan conforms to this definition.

G. Not later than December 31 of each year, each utility shall notify its customers of the percentage energy efficiency reductions expected to be achieved by the utility's energy efficiency programs for which the Commission has approved rate adjustment clauses pursuant to §56-585.1 A 5 c of the Code of Virginia.

20VAC5-350-40. Dispute resolution.

A. Customers and utilities shall seek to resolve all disputes arising out of the exemption process established under this chapter pursuant to the provisions of this section.

B. In the event of any such dispute, either party shall furnish the other a written notice of dispute. The notice shall describe in detail the nature of the dispute. The parties shall make good faith efforts to resolve the dispute informally within 10 business days of the receipt of such notice.

C. If any such dispute has not been resolved within 10 business days following receipt of the notice, either party may seek resolution assistance from the commission's Division of Public Utility Regulation where such matter will be treated as an informal complaint under the commission's Rules of Practice and Procedure (5VAC5-20).

Alternatively, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service for the purpose of assisting the parties in (i) resolving the dispute, or (ii) selecting an appropriate dispute resolution method or mechanism (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. In any such dispute resolution proceeding, each party shall conduct all negotiations in good faith and shall be responsible for 1/2 of any charges for the dispute resolution provider, but each party shall bear its own legal fees and other costs incurred as a result of the dispute resolution process.

D. If any such dispute remains unresolved following the parties' good faith exercise of the dispute resolution alternatives set forth in this section, either party may file a formal complaint with the commission pursuant to the commission's Rules of Practice and Procedure (5VAC5-20).

20VAC5-350-50. Waiver and enforcement.

A. The commission may waive any or all parts of this chapter for good cause shown.

B. The commission on its own motion may initiate steps necessary to verify a nonparticipating customer's achievement of energy efficiency if the commission has a body of evidence that the nonparticipating customer has knowingly misrepresented its energy efficiency achievement. Such proceedings shall be governed by the commission's Rules of Practice and Procedure (5VAC5-20).